IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 388 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DILIPKUMAR DULERAY DOSHI

Versus

STATE OF GUJARAT

Appearance:

MR ASHISH OZA FOR MR KB ANANDJIWALA for Petitioner No. 1

MS HARSHA DEVANI, APP for Respondent

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 28/08/2002

ORAL JUDGEMENT

1. Learned Advocate for the aplicant was heard.

This is an application under Section 407 of the Criminal Procedure Code to transfer Criminal Case No. 2753/92 from the file of of Chief Judicial Magistrate, Rajkot to

the file of Judicial Magistrate, First Class, Morbi. Learned APP Ms. Harsha Devani was heard.

2. In sum and substance, against the present petitioner and other accused, a charge sheet came to be filed in the Court of learned Judicial Magistrate, First Class, Morbi, which was registered as Criminal Case No. 393/1976.

This Court vide a common judgment dated September 27, 1978, in Criminal Misc. Application No. 206/78 with Criminal Misc. Application No. 187/78 directed that the said Criminal Case which came to be transferred to the court of learned Chief Judicial Magistrate, Rajkot, from the Court of Learned JMFC, Morvi, was required to be transferred to Judicial Magistrate, First Class at Morvi. The copy of the order produced by the learned advocate for the applicant is taken on record. The Court observed as under :

" In the view which I am taking the learned Magistrate's order granting pardon to the accused No.1 and transferring the case to the learned Chief Judicial Magistrate, Rajkot, deserves to be set aside."

3. This court was dealing with the issue of tendering pardon to one of the accused and transferring the case from the court of learned JMFC, Morbi to the court of learned Chief Judicial Magistrate, First Class, Rajkot. In pursuance of the above said order of this Court, the Criminal Case No. 393/76, therefore, was directed to be conducted by learned JMFC at Morbi in terms of the order of this Court. However, thereafter, by an administrative order, the learned Sessions Judge, Rajkot, transferred this Criminal Case No. 393/76 from the Court of learned JMFC, Morbi to the court of learned Chief Judicial Magistrate, First Class, Rajkot and hence this application u/s 407 of the Cr. P.C. to re-transfer the said Criminal Case from the court of learned Chief Judicial Magistrate, First Class, Rajkot to the court of learned Judicial Magistrate, First Class at Morbi.

4. In view of the fact that this Court vide above referred order dated 27.9.78 has directed to conduct the above said case by learned JMFC at Morbi, the application deserves to be allowed and following order is passed:

"Criminal Case - old No., of the Court of Learned JMFC, Morvi, being 393/1976 and which is given Number in Chief Judicial Magistrate, First Class, Rajkot as

Criminal Case No. 2753/82 is hereby ordered to be transferred to the court of learned Judicial Magistrate, First Class, Morbi, from the court of learned Chief Judicial Magistrate, First Class at Rajkot. Office is directed to take immediate steps to issue writ and learned Sessions Judge, Rajkot is also directed to effect the transfer of the case immediately on receiving the writ of this Court. Rule is made absolute.

(J.R. Vora, J.)

p.n.nair